



Department of Toxic Substances Control



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TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

PROPOSED REGULATIONS

GROUNDWATER REMEDIATION LOAN PROGRAM

Department Reference Number: R-00-08

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to adopt Article 2, Chapter 47, Division 4.5, Title 22 of the California Code of Regulations.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

DTSC will hold a public hearing at 10:00 a.m. on January 15, 2002 in the California Environmental Protection Agency, second floor Sierra Hearing Room, 1001 I Street, Sacramento, California, at which time any person may present statements or arguments, orally or in writing, relevant to the proposed regulations. Written comments submitted prior to the close of the public comment period, 5:00 p.m. on January 15, 2002 will also be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register prior to the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded the opportunity after the registered persons have been heard.

AUTHORITY AND REFERENCE

These regulations are being proposed under the authority of the Health and Safety Code (HSC) sections 25150 and 25351.5, as well as Water Code section 79133. The HSC reference gives DTSC broad authority to adopt regulations dealing with hazardous waste. The proposed regulations would implement, interpret, or make specific Water Code section 79133, which mandates DTSC to develop regulations.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Water Bond Act of 1999 established the Groundwater Remediation Loan Program. This new \$7,000,000 program will provide low interest loan funding for local agencies to address groundwater remediation projects that are necessary to prevent, minimize, or mitigate damage that may result from a release or threatened release of hazardous substances. In order to make this funding available as soon as possible, DTSC adopted emergency regulations (effective June 27, 2001). These regulations establish the application process, loan criteria, and other relevant requirements.

These proposed regulations are necessary to comply with the statutory requirements in the Water Code, section 79133. The proposed regulations are based on DTSC's experience in administering various site cleanup programs and the State Water Resources Control Board's (SWRCB's) expertise in administering the multi-million dollar State Revolving Fund (SRF).

DTSC has no comparable loan programs and the requirement for developing these regulations (Water Code section 79133) does not provide specific criteria. DTSC relied on the statutory provisions of Chapter 6.8 (also known as the State Superfund statute) and the statutory framework of the Water Code. In addition, DTSC developed criteria for the selection of projects, the oversight of projects, and repayment of loan funds in consultation with the SWRCB, the agency that administers the multi-million dollar SRF.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under the CEQA. A copy of the draft Notice of Exemption for the regulations is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

Peer review under the provisions of HSC, section 57004, is not required since the rules do not involve scientific findings but, instead, set administrative standards.

BUSINESS REPORT

The rulemaking will not require that businesses write a new report, as defined by Government Code, section 11346.3(c).

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: DTSC has determined that adoption of these regulations creates no new local mandates.

Estimate of Potential Costs or Savings Subject to Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: DTSC has determined that the proposed regulations will provide no costs or savings

subject to reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency: DTSC has determined that the proposed regulations have some impact on state agencies. DTSC has been provided \$81,000 in order to prepare regulations. DTSC and SWRCB are to receive bond funding as allowed by Water Code section 13480(b). It is anticipated that the funding provisions for administration and bond costs will be adequate to cover the expenses incurred. DTSC will initially receive applications, review and develop priority criteria concerning applications, and evaluate the applicant's loan eligibility. SWRCB will prepare a loan agreement for signature by the applicant for the final loan terms and repayment of the loan.

Cost or Savings in Federal Funding to the State: None.

Effect on Housing Costs: DTSC has determined that there is no impact on housing costs.

Cost Impacts on Representative Private Persons or Businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Statewide Adverse Economic Impact on Businesses: DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

(A) Creation or elimination of jobs with California - DTSC has determined that implementing this loan program will not have an adverse impact on the creation or elimination of jobs with California.

(B) Creation of new businesses or the elimination of existing businesses within California - DTSC has determined that there will be no significant impact on the creation of new businesses or the elimination of existing businesses within California.

(C) Expansion of businesses currently doing business in California – DTSC has determined that implementing this loan program will not have an adverse impact on the expansion of businesses currently doing business in California.

Effect on Small Businesses: Water Code section 79133 requires DTSC to develop regulations; however, the loan program is voluntary and only local agencies may apply. DTSC has determined that the proposed regulations may eventually affect small business if local agencies obtain contractors to perform the groundwater remediation work.

CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments with respect to the various options, at the scheduled public hearing or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons and text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Joan Ferber of DTSC's Environmental Analysis and Regulations section as specified below. The information upon which DTSC relied is available at the address shown below.

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the public hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once a regulation has been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other material, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Ms. Joan Ferber at the address below.

CONTACT PERSONS

Inquiries regarding the technical aspects of the proposed regulations may be directed to Ms. Jackie Spizman of the Department of Toxic Substances Control's Site Mitigation Program at (714) 484-5460 or Ms. Laurie Grouard at (916) 323-3394. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before these regulations are adopted, amended, or repealed. If you have questions concerning this administrative action, please contact Joan Ferber at (916) 322-6409 or James McRitchie at (916) 327-8642. To be included in the mailing list for this regulation package, and **to receive updates of this rulemaking**, please leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

Please direct all written comments to Ms. Ferber at the address below:

Ms. Joan Ferber, Regulations Coordinator
Environmental Analysis and Regulations Section
Department of Toxic Substances Control

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Dated: 11/26/01

Original Signed By:
James McRitchie, Chief
Office of Environmental Analysis,
Regulations and Audits